



7020-02

INTERNATIONAL TRADE COMMISSION

The Appointment of the Commission's Administrative Law Judges for Section 337 Investigations

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission's administrative law judges ("ALJs") have been appointed in conformance with the Appointments Clause of the U.S. Constitution and with the Tariff Act.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), provides for certain determinations to be "made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5." 19 U.S.C. 1337(c). Pursuant to subchapter II of chapter 5 of title 5, the Commission employs ALJs to conduct formal adjudications and to make initial and recommended determinations. 5

U.S.C. 556-557; 19 CFR 210.3 (“administrative law judge”). Pursuant to section 331 of the Tariff Act, 19 U.S.C. 1331, the Chairman of the Commission has the authority to “appoint and fix the compensation of such employees of the Commission as he deems necessary,” including ALJs. 19 U.S.C. 1331(a)(1)(A)(1). Any such decision by the Chairman, however, is “subject to disapproval by a majority vote of all the commissioners in office.” *Id.* § 1331(a)(1)(C). The hiring of the Commission’s ALJs has been in conformity with Titles 5 and 19 of the U.S. Code, as well as with such regulations as were then in force by the Office of Personnel Management, 5 CFR 930.201-.211.

The Appointments Clause of the Constitution, art. II, § 2, cl. 2, provides, in relevant part, that Congress may vest the appointment of inferior officers “in the Heads of Departments.” In the past two years, there have been legal developments concerning the Appointments Clause. These developments have included the 2016 decision of the U.S. Court of Appeals for the Tenth Circuit finding ALJs of the Securities and Exchange Commission (“SEC”) to be “inferior officers” for the purpose of the Appointments Clause, *Bandimere v. SEC*, 844 F.3d 1168, 1188 (10th Cir. 2016), *reh’g en banc denied* (May 3, 2017). In 2018, the Supreme Court decided that the ALJs of the SEC are inferior officers whose appointments were to be made by SEC and not by the SEC’s staff. *Lucia v. SEC*, 138 S. Ct. 2044, 2053-54 (2018); *see Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U.S. 477, 512 (2010).

The hiring of the Commission’s ALJs is, and has been, consistent with the Appointments Clause and with the Commission’s organic statute. Throughout at least the period of time between the hiring of the most-senior ALJ at the Commission (Chief Judge Bullock) until the

present, the appointment of ALJs has been made by the Chairman, and no Commissioner has initiated a vote to disapprove the appointment of an ALJ, as is the Commissioner's right under 19 U.S.C. 1331(a)(1)(C). Out of an abundance of caution, on March 14 and 15, 2018, the Commission (then-Chairman Schmidtlein, joined by then-Vice Chairman Johanson, and Commissioners Williamson and Broadbent) voted, by notational voting, to ratify the earlier appointments of Judges Bullock, Lord, McNamara, Pender and Shaw. Also out of an abundance of caution, on February 8, 2018, the Commission voted, by notational voting, in connection with Judge Cheney's original appointment.

Accordingly, the Commission's ALJs have all been appointed and/or ratified in conformance with the Constitution, and all applicable statutes and regulations. In addition, by this Notice, the Commission reiterates its approval of the appointments of Judges Bullock, Cheney, Lord, McNamara, Pender, and Shaw as its own under the Constitution.

By order of the Commission.

Issued: September 5, 2018.

Lisa R. Barton,
Secretary to the Commission.

[FR Doc. 2018-19584 Filed: 9/7/2018 8:45 am; Publication Date: 9/10/2018]